Magasu Sundram a/l T Magasu & Ors v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO S6–15–06 OF 2000
AZMEL J
22 FEBRUARY 2003

Land Law *— Acquisition of land — Compensation — Applicants appointed intended intervener to do the necessary with a view to obtain a bigger amount of compensation for the acquisition — Applicant agreed to give 10% of the additional compensation received to the intended intervener — Whether the intended intervener came within the meaning of 'persons interested' in order to justify him to be made a party — Land Acquisition Act 1960 s 14(2)*

Words and Phrases *— 'persons interested' — Whether the intended intervener came within the meaning of 'persons interested' in order to justify him to be made a party — Land Acquisition Act 1960 s 14(2)*

The intended intervener made an application to be included as a party to this action (encl 56). The first and second applicants as well as the respondent opposed this application. The brief facts were that the first applicant and his brother were not very satisfied with the amount of award received by them in respect of the compensation for the acquisition of their lands which was below the market value of property in the area. As such, the two brothers appointed the intended intervener to do the necessary with a view to obtain a bigger amount of compensation for the acquisition. For the works done by the intended intervener, the first applicant agreed to give him 10% of the additional compensation to be received by the first applicant. The only issue that needed to be determined in this case was whether the intended intervener came within the meaning of 'persons interested' in order to justify him to be made a party to the suit by virtue of s 14(2) of the Land Acquisition Act 1960 ('the Act').

Held, allowing the intervener's application:

(1) The term 'person interested' is inconclusive and a person can be said to be a person interested if he has interest in the land either directly or indirectly or if he has interest in the compensation in respect of the land acquired (see p 474A–B).

(2) The intended intervener had been appointed by the first applicant to prepare the necessary works for the purpose of obtaining additional compensation in respect of the land that had been acquired by the respondent, and that, the intended intervener had been promised that he would receive from the first applicant an amount of 10% of the additional compensation that the first applicant would receive from the respondent. The intended intervener would certainly come within the term 'persons

A interested' as defined under the Act. He need not have to be a person interested in the land that was acquired. On the facts adduced, he had clearly proved that he was a person interested in the 10% of the additional compensation to be awarded (see p 474B–D).

B

[Bahasa Malaysia summary

Bakal pencelah telah membuat satu permohonan untuk dimasukkan sebagai satu pihak kepada tindakan ini (lampiran 56). Pemohon-pemohon pertama dan kedua dan juga responden telah
C membangkang permohonan ini. Fakta-fakta ringkas adalah bahawa pemohon pertama dan abang beliau yang berasa tidak puas hati dengan jumlah award yang diterima oleh mereka berhubung pampasan untuk perolehan tanah-tanah mereka yang di bawah harga pasaran hartanah di kawasan tersebut. Oleh itu, kedua-dua adik-
D beradik tersebut telah melantik bakal pencelah tersebut untuk membuat apa yang perlu agar dapat jumlah pampasan yang lebih besar untuk perolehan tersebut. Untuk kerja-kerja yang dibuat oleh bakal pencelah, pemohon pertama telah bersetuju untuk memberikan kepada beliau 10% daripada pampasan tambahan yang akan diterima oleh pemohon pertama. Satu-satunya persoalan yang perlu
E ditentukan dalam kes ini adalah sama ada bakal pencelah tersebut terlingkung dalam maksud 'persons interested' bagi tujuan menjustifikasikan beliau dijadikan satu pihak kepada guaman ini menurut s 14(2) Akta Perolehan Tanah 1960 ('Akta tersebut').

Diputuskan, membenarkan permohonan pencelah:

F

(1) Terma 'person interested' adalah tidak muktamad dan seseorang itu boleh dikatakan seorang yang berkepentingan jika beliau mempunyai kepentingan dalam tanah tersebut sama ada secara langsung atau tidak langsung atau jika beliau mempunyai kepentingan dalam pampasan berhubung tanah yang diperoleh
G tersebut (lihat ms 474A–B).

(2) Bakal pencelah tersebut telah dilantik oleh pemohon pertama untuk menyediakan kerja-kerja yang perlu bagi tujuan memperolehi pampasan tambahan berhubung tanah yang diperolehi oleh responden, dan bahawa, bakal pencelah tersebut
H telah dijanjikan bahawa beliau akan menerima daripada pemohon pertama sejumlah 10% daripada pampasan tambahan yang pemohon pertama akan terima daripada responden. Bakal pencelah sememangnya terlingkung dalam terma 'persons interested' sebagaimana yang ditafsirkan di bawah Akta tersebut. Beliau tidak perlu menjadi seorang yang mempunyai kepentingan
I dalam tanah yang diperolehi. Berdasarkan fakta-fakta yang dikemukakan, beliau dengan jelas telah membuktikan bahawa beliau adalah seorang yang mempunyai kepentingan dalam 10%

daripada pampasan tambahan yang akan diawardkan (lihat ms 474B–D).] A

Notes

For cases on compensation for acquisition of land, see 8 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1582–1581. B

Cases referred to

Himalayan Tiles v FV Coutinho AIR 1980 SC 1118 (refd)
Sunderlal v Paramsuladas AIR 1968 SC 306 (refd) C

Legislation referred to

Land Acquisition Act 1960 ss 2, 9, 9A, 14(2), First Schedule, 1(2), 2(d)

YH Lim (*Yew Hock & Loh*) for the first applicant. D
Savinderjeet Singh (*Atma Singh Veriah & Co*) for the second applicant.
Dato' Abdul Aziz bin Abdul Rahim (Senior Federal Counsel) (Attorney General's Chambers) for the respondent.
CP Mahendran (*RR Chelliah Brothers*) for the intended intervener.

Azmel J: This is an application by the intended intervener, Muthu a/l Murugiah, to be included as a party to this action (encl 56). The first and second applicants as well as the respondent opposed this application. E

The brief facts that led the intended intervener to make this application are as follows. The first applicant and his brother Sivapathy were not very satisfied with the amount of award received by them in respect of the F compensation for the acquisition of their lands, namely, Lots PT3717, PT3718 and PT3719. The first applicant was only awarded RM85psf whereas the market value of property in the area was found to be RM200psf. As such, the two brothers appointed the intended intervener to do the necessary with a view to obtain a bigger amount of compensation for the acquisition. The intended intervener informed the first applicant that he G could make a case for further compensation on the following grounds:

(i) revaluation upwards of the RM85psf originally mistakenly agreed to;

(ii) compensation for injurious affection;

(iii) compensation of the surrendered land, which was overlooked as a H result of the issuing of new titles in accordance with the approved development plan which excluded the surrendered land as compensation was based strictly on the new title. The amendments to s 9 of the Land Acquisition Act 1960 with the incorporation of s 9A established new principles on the amount of compensation being awarded. The damages the first applicant is entitled to as a result of I having to abort the development project, for which 31,703ft was surrendered to the authorities has to be assessed in accordance with

ss 1(2) and 2(d) of the First Schedule of the Land Acquisition (Amendment) Act 1977.

The intended intervener then prepared a letter on behalf of the first applicant to the land administrator to seek further compensation. For the works done by the intended intervener, the first applicant agreed to give him 10% of the additional compensation to be received by the first applicant. The above facts were not challenged by any of the first and second applicants as well as the respondent.

The only issue that needed to be determined in this case is whether the intended intervener comes within the meaning of 'persons interested' in order to justify him to be made a party to this suit. This becomes quite necessary in the light of the provisions of s 14(2) of the Land Acquisition Act 1960 ('the Act'), which states:

> Every award prepared under sub-s (1) shall be filed in the office of the Land Administrator and shall be final and conclusive evidence of the area of any scheduled land, of its value in the opinion of the Land Administrator, and of the apportionment of the compensation awarded by the Land Administrator, *whether the persons interested have or have not appeared at the inquiry.* (Emphasis added.)

In the Act, the term 'person interested' has been defined under s 2 as follows:

> 'persons interested' includes every person claiming an interest in compensation to be made on account of the acquisition of land under this Act, but does not include tenant at will.

The first and second applicants as well as the learned senior federal counsel representing the respondent in this case had opposed the application by the intended intervener on the ground that he was not a person within the meaning of 'person interested' as defined under the Act.

I must admit that there has not been any Malaysian case which had dealt on this issue. However, the counsel for the intended intervener referred to an authority in the first applicant's bundle of authorities. At p 3 of the first applicant's bundle of authorities refers to the content of a book entitled *The Law of Land Acquisition and Compensation* Vol 1 written by VG Ramachandran. In his dealing with the definition of 'a person interested', the author, at p 2 stressed that the definition of the term clearly is not exhaustive. At p 3, the author quotes the observation of the Indian Supreme Court judge in the case of *Sunderlal v Paramsuladas* AIR 1968 SC 306 as follows:

> *It is not necessary that in order to fall within the definition a person should claim an interest in land which has been acquired.* A person becomes a person interested if he claims an interest in the compensation to be awarded. (Emphasis added.)

On the same p 3, the learned author went on to quote the decision of another Indian Supreme Court case of *Himalayan Tiles v FV Coutinho* AIR 1980 SC 1118 as follows:

> ... it seems to us that the definition of the term is an inconclusive one and must be liberally construed to embrace all persons *who may be directly or indirectly interested either in the title of the land or in the question of compensation.* (Emphasis added.)

Based on the circumstances as mentioned above, the following conclusion can be made. The term 'person interested' is inconclusive and a person can be said to be a person interested if he has interest in the land either directly or indirectly or if he has interest in the compensation in respect of the land acquired.

On the evidence adduced, it was my finding that the intended intervener had been appointed by the first applicant to prepare the necessary works for the purpose of obtaining additional compensation in respect of the land that had been acquired by the respondent, and that, the intended intervener had been promised that he would receive from the first applicant an amount of 10% of the additional compensation that the first applicant would receive from the respondent. In my view, based on such facts and applying the above said principle, the intended intervener would certainly come within the term 'persons interested' as defined under the said Act. He need not have to be a person interested in the land that was acquired. On the facts adduced, he had clearly proved that he was a person interested in the 10% of the *additional* compensation to be awarded.

For the reasons that I have stated above, I allowed the intended intervener's application. I ordered that costs be in the cause.

Intervener's application allowed.

Reported by Ezatul Zuria Azhari